Fourth, quite apart from the efficacy of the "effective market access" test in opening foreign markets, the mere implementation of the test will impose new burdens on potential competitors. See, e.g., Nynex 8; France 2 (stating that if NPRM's procedures supplement rather than supplant existing procedures, this would cause regulatory delays, "would be perceived by France as the implementation of new barriers to the entry of foreign entities in the US telecommunications market, and would cause France serious concern"). If the comments in this proceeding show anything, they show that the Commission's decisions under the proposed test will involve input from multiple parties, substantial delay, and significant expenditures of resources by the Commission as well as participants. The mere prospect of such delay and expense is a disincentive to new competition.

Perhaps recognizing that the Commission's rule cannot legitimately rest on trade considerations such as a desire to leverage open foreign markets, and is ill-suited to coerce foreign governments to open their markets, AT&T also maintains that the "effective market access" test is necessary to contain the risk of anticompetitive conduct. AT&T iv, 4, 46-47. That assertion, however, is inconsistent with the Commission's past decisions and utterly lacking in merit. See DT 24-28. AT&T's litany of hypothetical anticompetitive actions that "might" occur are fully addressed by the various safeguards available to the Commission.

DT wishes to point out, moreover, that the Commission should seriously consider whether it is advisable to extend into the international context the kind of argumentation made in AT&T's comments concerning asserted hypothetical risks of misconduct. As several commenters point out, the regulatory traditions in other countries differ significantly from those

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it to acquire "technical and marketing expertise in the delivery of integrated voice and video services" that it could not have developed in United States (due to cable-telco cross-ownership ban, see 47 U.S.C. § 533(b)).

in the United States. In many countries, anticompetitive conduct is handled principally through retrospective actions taken to punish actual misconduct, with safeguards used as supplements to reduce significant risks of anticompetitive conduct. In the United States, and particularly under the MFJ, it has become acceptable to permit powerful incumbents to concoct long lists of hypothetical evils (which need not have any demonstrable basis in actual experience) and to argue on the basis of such hypothetical risks that potential competitors should be excluded from the incumbent's markets. That form of analysis, we submit, has in some cases resulted in competition being stifled rather than protected.

Finally, it is worth reiterating that adoption of an effective market access test (inapplicable to non-equity arrangements) would impose an entry barrier benefitting AT&T more than any other U.S. carrier. AT&T is very large and does not have the same needs for new capital as its smaller U.S. competitors. Its global reach (already accomplished by its WorldPartners' alliance) will be favored to the detriment of AT&T's much smaller competitors if it is exempted, as proposed, as a non-equity alliance from any effective market access requirement. This will only spur more foreign carriers to enter the AT&T alliance. It is difficult to imagine an outcome that would do more damage to the Commission's principal goal in this proceeding — promoting competition in the market for global services.

III. THIS RULEMAKING IS UNTIMELY

In our opening comments (at 44-51), we explained that even if the Commission is empowered to adopt the "effective market access" test and that test is worthy of implementation, now is not the time for the Commission to engage in this rulemaking. We gave three reasons for this conclusion. First, Congress is in the midst of considering broad reforms to the Nation's telecommunications laws, including changes to Section 310(b)(4) that could affect the Commission's authority to employ the "effective market access" test. Second, the United States' trade negotiators are engaged in multilateral General Agreement on Trade in Services ("GATS") talks being conducted by the Negotiating Group on Basic Telecommunications ("NGBT") on the subject of trade issues concerning basic telecommunications services. And third, the European Union ("EU") in general (and Germany, its largest and most important telecommunications market, in particular) are in the midst of an ambitious reform program aimed at opening up telecommunications markets to full competition, which the Commission's initiative risks derailing.[20] For all of these reasons, we asked the Commission to terminate (or at a minimum suspend) this rulemaking.

Numerous commentators agree that this rulemaking is untimely for one or more of the foregoing reasons. For example, several maintain that multilateral negotiations rather than FCC rulemakings are the proper forum in which to resolve trade issues. The British Government, for example, states that the laudable goal of encouraging open markets "should be achieved through pursuit of trade policy, negotiating in multilateral fora such as the WTO, not through introducing reciprocity arrangements in telecommunications regulatory regimes." Britain 6; see also id. at 8 (stating that WTO "is the most appropriate forum" to achieve FCC's goals). The French government likewise maintains that any reciprocity regime should be negotiated and implemented in a multilateral forum such as the ongoing WTO talks concerning basic telecommunications services. France 1-2; see also Mexico 3 (stating that U.S.-Mexico policies should be developed in cooperative manner rather than through unilateral action of either side).

NTIA's comments likewise suggest that the multilateral GATS talks should be the government's principal avenue for opening foreign telecommunications markets. Thus, NTIA

[20] German authorities recently announced an implementation schedule that will assure the rapid development of competition, and have reaffirmed their longstanding commitment to markets free of all barriers to foreign investment.

describes the Executive Branch's primary and "multifaceted" strategy of working through international channels to further the goals identified by the Commission in this proceeding, and stresses in particular the ongoing GATS negotiations over basic telecommunications. NTIA 4-8. Noting that the GATS negotiators are operating under an April 30, 1996 deadline, NTIA states that "[i]n the event that the NGBT is not successful * * * the Executive Branch intends to work with the Congress and Commission to ensure that our common goal of effective competition in the international marketplace can be met." Id. at 8 (emphasis added). Although not free from ambiguity, this statement certainly implies that the Executive Branch views the GATS process as taking precedence over the Commission's actions in the trade field, at least until the April 1996 deadline. For that reason, the Commission should, at a minimum, postpone these proceedings for a year until that deadline has passed and the Executive Branch is once again in a position to "work with" the Commission. Indeed, such a postponement would be required if the Executive Branch is correct (as we believe it is) that the FCC must accord great (if not absolute) deference to Executive Branch agencies in applying any "effective market access" test.

Far from agreeing that this proceeding is untimely and should be delayed, AT&T demands that the Commission immediately adopt and implement the proposed "effective market access" test. AT&T iv, 18, 25. According to AT&T, the "public interest demands prompt implementation" of the test. Id. at 18. In making this argument, AT&T says that it "shares the commitment of the Commission to implement its effective market access standard as soon as possible." Id. at 24-25. So anxious is AT&T to obtain immediate implementation of the Commission's proposed rule that it is willing to allow postponement of AT&T's objections to the NPRM's exclusion of resale services until a "second rulemaking phase." Id. at 25; see also id. at 18-19.

AT&T's demand for hasty action should be rejected out of hand. As an initial matter, the idea that the Commission has made a "commitment" to act hastily on AT&T's petition for rulemaking is ludicrous. AT&T filed its rulemaking petition in September of 1993 and the Commission has waited seventeen months, until February of 1995, to initiate these proceedings. AT&T cites nothing to support its attempt to attribute to the Commission a desire to act hastily in this proceeding, and we have been unable to find any hint in the NPRM that the Commission has made any such commitment.

AT&T's request for immediate action should be rejected on the merits as well. Even if the Commission disagrees with our claim that this proceeding is untimely and should be terminated, the active consideration by Congress of telecommunications reforms bearing directly on issues raised in this proceeding counsels strongly in favor of at least a brief postponement of these proceedings, for reasons we have previously outlined. See DT 46-47.[21] More important, the serious objections to the Commission's proposal that have been raised by numerous commentors (including foreign governments) require the Commission's careful and full consideration. It surely would disserve the public interest for the Commission to rush to issue a rule that rests on such legally shaky grounds (and thus carries a high likelihood of future legal challenge). Such a step cannot be justified merely on the ground that an interested party — albeit the dominant U.S. telecommunication services company — strongly supports quick action.

[21] In addition to S. 652 and other bills currently under consideration in the Senate, several telecommunications bills have been introduced in the House since the filing of our initial comments in this proceeding. See H.R. 1555, H.R. 1528. As these developments show, there is no indication that Congress's interest in these issues has abated.

IV. IF THE COMMISSION IMPLEMENTS AN "EFFECTIVE MARKET ACCESS" TEST, THEN IT SHOULD AT LEAST ADOPT AN APPROPRIATE DEFINITION OF AFFILIATION

As explained in our opening comments (at 51-62) and above, DT strongly believes that the Commission should continue its current approach under Section 214 and not seek to coerce foreign countries to permit "effective market access" to U.S. carriers. But if the Commission decides to impose such a requirement, then at a minimum it should define affiliation for purposes of Section 214 as the holding of a controlling interest. For reasons explained in our opening comments (at 5, 11-12, 60-61) and below, DT submits that the Communications Act forbids a definition of affiliation under Section 214 that includes non-controlling interests. In addition, only by limiting the definition of affiliation to situations where the foreign carrier controls the U.S. affiliate will the likelihood of effectuating the stated goals of this proceeding be more than negligible. Accordingly, the Commission should continue to use control as the basis for a finding of affiliation in this context. The NPRM and the comments submitted provide no valid reason to alter the Commission's existing practice.

If the Commission rejects the foregoing approach and decides (unwisely, in DT's view) to define affiliation to include non-controlling interests, then it can mitigate the harm by refusing to exempt non-controlling non-ownership interests that give rise to equivalent theoretical "incentives" to engage in anticompetitive conduct. In addition to being intellectually indefensible, such an exemption would undermine the Commission's stated goals in this proceeding by allowing AT&T to establish a dominant position in the market for global services, to the detriment of U.S. consumers, new competitors, and competition alike. The exemption, moreover, is roundly criticized by all commentors (except, of course, AT&T). In addition, there is no need for the Commission even to consider AT&T's lonely defense of the "non-ownership" exemption because AT&T itself, in the Royalty/Funding litigation (see DT 59-60) has belittled and criticized the very same arguments it is now recommending to the Commission. And even if such gamesmanship does not preclude consideration of AT&T's arguments, those arguments are wrong and ought to be rejected.

A. The Communications Act Forecloses Application to Foreign Carriers of A Definition of Affiliation Under Section 214 That Includes Non-Controlling Interests

Section 214 authorizes review by the Commission only upon certain triggering events: (1) "construction of a new line or of an extension of any line"; (2) "acqui[sition] or operat[ion] [of] any line, or extension thereof"; (3) "engag[ing] in transmission over or by means of such additional or extended line"; or (4) "discontinuance, reduction, or impairment" of service. 47 U.S.C. § 214(a). Here, the Commission is proposing new rules for situations where a foreign carrier enters the U.S. international services market by "acquir[ing] or operat[ing]" a "line." But a foreign carrier cannot be said, by virtue of an investment in a U.S. carrier, to have "acquired" or to be "operating" a line unless the foreign carrier obtains a controlling interest. See also Sprint 7-11. Only a controlling interest will permit the foreign carrier to "operate" the U.S. affiliate's lines, or to "acquire" those lines.[22]

For that reason, acquisition by a foreign carrier of anything short of a controlling interest does not give rise to any event triggering the Commission's authority under Section 214. This limitation on the Commission's authority is confirmed by the jurisdictional provision of the Communications Act that relates to connecting carriers. See, e.g., 47 U.S.C. § 152(b)(2) (forbidding the Commission to exercise jurisdiction over, among other things, "any carrier engaged in * * * foreign communication[s] solely through physical [inter]connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct

[22] Indeed, arguably anything short of a majority ownership interest will not result in the "acquisition" of a line.

or indirect common control with such carrier") (emphasis added). The Commission cannot circumvent these limits on its Section 214 authority by adopting an expansive definition of affiliation.

B. The Commission Should Continue Its Established Approach By Limiting Affiliation To Control

Even if the Commission rejects the foregoing argument and concludes that, under Section 214, it is authorized to adopt a definition of affiliation which embraces non-controlling interests, the Commission should decline to take that step. Instead, as we explained in our previous comments (at 51-56), the Commission should retain its general approach, prescribed less than three years ago in the context of post-entry regulation in Regulation of International Common Carrier Services, 7 FCC Rcd 7331, 7332-33 (1992) ("International Services"), of defining "affiliation" as control. All of the reasons for adopting that approach and for rejecting a lower threshold for affiliation in the post-entry context apply with equal force in the "entry" context.[23] Many of the comments support this position. See, e.g., Nynex 3, 6; FT 4-8, 10, 27-29; Sprint 7-11.

Curiously, the NPRM proposes to loosen this standard of affiliation for purposes of regulating entry as well as post-entry operations (NPRM ¶¶ 52-66; see also id. at ¶¶ 55, 57), not because it will further the stated goals of this proceeding (including the opening of foreign markets) but rather because a broader definition is assertedly needed to guard against

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[23] In making control the benchmark of affiliation, the Commission explained that this definition encompassed all situations where a foreign carrier "has the ability to discriminate in favor of its U.S. affiliate in the provision of services or facilities used to terminate U.S. international traffic." International Services, 7 FCC Rcd at 7332 (emphasis added). The Commission rejected a broader definition that would have included non-controlling ownership (and non-ownership) interests on the ground that while such arrangements theoretically might give rise to an incentive to discriminate, discrimination is for a variety of reasons "unlikely" to occur in the absence of control. Id. at 7332-33. See also DT 51-53.

anticompetitive risks in the international services market. That, however, is exactly the rationale invoked by the Commission in International Services for adopting a control standard of affiliation. The NPRM nowhere provides an explanation for why abandonment of the Commission's previous position is warranted.[24]

Several commentors recommend that affiliation be defined as ownership at or above the 10% level. See, e.g., AT&T 25-27; BT 8-10; MCI 10-12; GTE 8. These proposals rely heavily on supposed analogies lifted from the NPRM. But as we explained in our opening comments (at 57), such analogies are of little assistance in view of wide variety of ways in which the concept of affiliation has been defined.[25]

As FT correctly observes (at 5-6), any affiliation standard triggered by ownership at or below 20% suffers from the additional shortcoming of requiring the Commission to reverse its recent decision in MCI Communications Corporation, British Telecommunications plc, Joint Petition for Declaratory Ruling, 9 FCC Rcd 3960, 3965 (1994) (BT/MCI). In that case, the Commission addressed the question whether a non-controlling investment in a U.S. carrier by a non-U.S. carrier is compatible with the public interest. In answering that question

[24] In International Services, the Commission acknowledged but ultimately rejected as incorrect "the concern [raised by Comments of the Department of Justice] that a less-than-controlling interest by a foreign carrier in a U.S. carrier could give the foreign carrier the financial incentive to favor its U.S. affiliate." 7 FCC Rcd at 7332. The NPRM in this proceeding makes the very same "financial incentive" argument and cites to the very same DOJ comments previously rejected by the Commission in International Services. NPRM ¶ 54. This about-face hardly qualifies as reasoned rulemaking.

[25] For example, the 10% threshold for securities reporting requirements and for waiver of the line-of-business restrictions of the AT&T Consent Decree (see BT 8-9; AT&T 25-26) are far-removed from the context of foreign carrier ownership of U.S. carriers. DT at 57. Adequate disclosure to public shareholders is not at issue here, nor is waiver of a remedial restriction imposed by an antitrust court as part of a final judgment. The closest analogy, of course, is the Commission's decision in International Services, which counsels in favor of a control standard. See note 23, supra.

affirmatively, the Commission "expressly held that a 20% non-controlling minority investment in a U.S. carrier is not 'entry' into the U.S. market." FT 5. See BT-MCI, 9 FCC Rcd at 3965. It is difficult to see how the acquisition of a less-than-controlling interest could possibly be described as "entry". In so holding, the FCC relied on Optel Communications, 8 FCC Rcd 2267 (1993) ("Optel"), in which the Commission, exercising its authority under the Cable Submarine Landing Act, likewise concluded that a 20% ownership stake did not qualify as entry. Setting an affiliation standard at or below 20% would require overruling both BT-MCI and Optel. Neither the NPRM nor the comments provide any good reason to do so.

Proponents of a low threshold maintain that such a standard is necessary to prevent anticompetitive conduct. See, e.g., MCI 11-12; AT&T 25. Thus, MCI asserts that an interest of 10% "would be sufficient to give a foreign carrier the incentive to discriminate and otherwise engage in anticompetitive conduct favoring its affiliated U.S. carrier." MCI 11. BT states that "[i]t is reasonable to presume an incentive to discriminate" arising from a 10% ownership stake, but fails to state why such a presumption is reasonable. BT 8. Finally, AT&T makes the sweeping statement that "financial interest of any magnitude can taint the behavior of the investor," and concludes from that premise (somewhat oddly) that interests of 10% or greater would lead to an affiliation. AT&T 25 (emphasis added). These conclusory assertions do not even begin to establish the factual predicate or legal analysis necessary to overturn established FCC policy.

As we explained at length in our opening comments (at 54-56), questions surrounding the appropriate definition of affiliation should be answered by reference to the Commission's stated objectives in this proceeding. The Commission's overarching goal is to "promote effective competition in the global market for communications services." NPRM ¶¶ 1, 20-21, 26. Its two subsidiary goals are to prevent anticompetitive conduct in the provision of international services or facilities (the only goal mentioned in the NPRM in its discussion of affiliation), and to encourage foreign governments to open their communications markets. NPRM ¶ 26. Retention of the control standard would further, more than any other suggested standard, all three of these goals. See DT 54-56.

Finally, it is worth pointing out that a low threshold of ownership for affiliation will necessarily favor AT&T and disadvantage its markedly smaller rivals. AT&T's market capitalization at the end of 1994 was in excess of 75 billion dollars. AT&T 1994 Annual Report i, 31. A 10% stake in the company would therefore cost at least $7.5 billion.[26] Few if any international carriers could afford to become an AT&T "affiliate." By contrast, AT&T's smaller competitors, who have far more pressing needs for capital and at the same time far less ability to raise it, are required to form affiliations within the meaning of AT&T's proposed test in order to raise much smaller sums. But in order to obtain such new capital from foreign carriers, AT&T's competitors must tolerate what promises to be a lengthy and protracted review for "effective market access" by the Commission. That competitive disadvantage will only serve to widen AT&T's lead over its competitors, to the detriment of consumers and competition. For all of these reasons, the Commission should adopt control as the standard for affiliation.

C. If The Commission Defines Affiliation To Include Non-Controlling Ownership Interests, It Cannot Logically Exclude Non-Ownership Interests That Give Rise To Equivalent Incentives To Engage In Anticompetitive Conduct

In our opening comments (at 58-59), we explained that if the Commission does adopt a definition of affiliation that includes non-controlling ownership interests on the ground that such arrangements may give rise to "incentives" to engage in anticompetitive conduct (see

[26]In addition, as Nynex correctly observes, it is only because of AT&T's "already formidable presence in the global telecommunications market" that "it is in a position to negotiate non-equity business arrangements." Nynex 13.

NPRM ¶¶ 62-63), then it makes no sense for the Commission to exclude non-ownership interests falling short of control that present identical risks and incentives. See FT 12 ("no rational basis" for exclusion). In particular, we questioned the Commission's tentative conclusion that co-marketing arrangements such as AT&T's WorldPartners Company should not give rise to an affiliation triggering review "provided [that] they are, both in theory and in practice, nonexclusive." NPRM ¶ 63 (footnote omitted).

Not surprisingly, the NPRM drew sharp comment from a wide variety of sources over its proposal to exempt AT&T's WorldPartners and other types of arrangements, both equity and non-equity, from the "effective market access" test. See, e.g., MFS International ("MFSI") 3;[27] TLD 52; Nynex 12-13. In fact, the overwhelming weight of opinion was against the proposed exemption. According to TLD, the real purpose of AT&T's proposed exemption is to favor AT&T. Whatever its purpose, that will most certainly be its effect. By exempting AT&T's WorldPartners arrangement, the Commission will be offering "free passes" to any and all foreign carriers that wish to join what is easily the largest global alliance. On the other hand, carriers without the market power of AT&T may have more difficulty negotiating analogous non-equity arrangements, thus enhancing AT&T's competitive advantage. See Nynex 13 ("[o]ther U.S. carriers, including Nynex, may not be in a position to negotiate such non-equity arrangements" but may "have to exchange equity interests with potential partners" in order "to form similarly advantageous global alliances"). To the extent that such a loophole is available,

[27] MFSI states, incorrectly, that DT and FT have become more amenable to negotiating correspondent agreements since Sprint filed for FCC approval of their proposed investment and that, as a consequence of this new disposition to negotiate, MFSI secured a license to provide services in Frankfurt, Germany. MFSI 5. In fact, DT played no role and had no say in the decision by the City of Frankfurt to grant MFSI a license.

moreover, the effect will be to erode the incentives of foreign governments to open markets in response to the "effective market access" test.

Moreover, as our opening comments explained (58-59), the line between equity and non-equity investments does not have the decisive importance attributed to it by the Commission's proposal (unlike the line between control and non-control). Not long ago, in fact, the Commission reached this very conclusion. See International Services, 7 FCC Rcd at 7333 ("[C]ertain non-ownership arrangements between a U.S. and foreign carrier, such as co-marketing agreements * * * or joint ventures * * * could provide a financial incentive for carriers to act jointly in pursuit of marketing objectives * * * ."). So did the D.C. Circuit in United States v. Western Electric Co., 12 F.3d 225 (1993) ("Royalty/Funding"). See DT 59-60. The Commission's proposed exclusion of WorldPartners cannot be reconciled with these decisions.

The Commission purports to distinguish certain co-marketing arrangements on the ground that they are "non-exclusive." NPRM ¶ 63. But as FT correctly points, this characteristic provides no basis for an exemption because many equity arrangements are also nonexclusive. FT 12-13 & n.7. In any event, the Commission's analysis is flawed. As the D.C. Circuit explained in Royalty/Funding, non-ownership and ownership affiliations both can give rise to an "incentive to pursue * * * [various anticompetitive] strategies." 12 F.3d at 232. See also Citicorp 3 (notes that co-marketing arrangements can present risks of discrimination).

In our previous comments, we noted that AT&T would be hard-pressed to deny this point without flatly contradicting the position it urged upon the D.C. Circuit in the Royalty/Funding appeal. See DT 60. In Royalty/Funding, AT&T strenuously maintained that the term "affiliated enterprise" in the MFJ included non-equity, non-control arrangements such as the revenue sharing deal in that case. A definition of affiliation "that turns on such 'formal attributes' as equity ownership," AT&T stated, "should be unthinkable in an antitrust decree designed to end incentives to leverage bottleneck facilities into adjacent vertical markets." Br. of Defendant-Appellee American Telephone and Telegraph Co. at 27, United States v. Western Electric Co., No. 92-5079. AT&T also argued that "a funding/division-of-revenue arrangement gives the RBOCs the ability to earn unlimited profits from investments in telecommunications equipment manufacturers or interexchange carriers and creates the same incentives to engage in discrimination and cross-subsidization as would an RBOC's ownership of one of those firms." Ibid. (emphasis added).

In a conversion that can only be described as breathtaking, AT&T now tells the Commission that "unlike foreign carrier investments in U.S. carriers, non-equity, non-exclusive arrangements like Worldpartners do not * * * create incentives to use home market monopolies to disadvantage other carriers." AT&T 20.[28] Nor is this all. AT&T filed its comments in this proceeding on April 11, 1995. On the very next day, AT&T filed an opposition in the Royalty/Funding remand proceedings in which AT&T vehemently opposed a waiver request that, if granted, would allow the RBOCs to participate in such funding/division-of-revenue arrangements. AT&T's Opposition to the RHCs' Renewed Motion for A Waiver of the Decree, United States v. Western Electric Co., No. 82-0192 (filed Apr. 12, 1995). In that document, AT&T told Judge Greene that the RBOCs should not be permitted to form non-controlling, non-ownership relationships of this kind because such ties create "powerful incentives * * * to discriminate in favor of [the] * * * affiliate, to cross-subsidize, and to foreclose competition."

[28] AT&T places considerable reliance on a two-and-one-half letter from the economist C. Fred Bergsten, which AT&T appends to its comments. AT&T 2-3. Curiously, AT&T neglects to mention Dr. Bergsten's acknowledgement that the theoretical possibility of leveraging foreign monopoly power is not limited to equity investments as AT&T would have this Commission believe but rather can occur "through alliance relationships, joint ventures, and takeovers of control or influence of US carriers." Bergsten Letter at 2.

Id. at 17. AT&T is free to talk out of both sides of its mouth, but the Commission is under no obligation to listen.[29]

CONCLUSION

For the foregoing reasons, DT urges the Commission either to reject the "effective market access" test, or to terminate or postpone this rulemaking proceeding. In the alternative, DT suggests that the Commission adopt a definition of affiliation for purposes of Section 214 that is limited to control.

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Dated: May 12, 1995

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[29] We previously explained that in order to best further the Commission's stated goals, any test for affiliation should not aggregate the control or ownership stakes of carriers from different countries. DT 61-62. The only colorable response to our analysis is AT&T's assertion that aggregation is desirable because it protects against "substantial cumulative foreign carrier ownership interest escaping Commission review." AT&T 27. But this argument does not withstand analysis. Not only does it lead to absurd results (such as sweeping in four foreign carriers, each of which purchase a miniscale 2.5% stake in a U.S. carrier) but it also is founded on untenable assumptions (such as the notion that substantial cumulative ownership is an evil per se, without regard to how fragmented that ownership might be or how open the home market of the investor).

CERTIFICATE OF SERVICE

I, Julian P. Gehman, do hereby certify that a copy of Deutsche Telekom AG's Reply Comments dated May 12, 1995, has been sent by United States mail, postage prepaid, to the parties listed on the attached service list, except where otherwise indicated.

Julian P. Gehman

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Dated: May 12, 1995

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